



Billing Code 3510-NK-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Docket No. 140903747-4747-01

RIN 0648-BE48

Olympic Coast National Marine Sanctuary Regulations; Correction

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Correcting amendment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is reinstating missing paragraphs of the Olympic Coast National Marine Sanctuary (OCNMS) regulations that pertain to the issuance of permits. NOAA inadvertently excluded the paragraphs in the publication of a November 2011 final rule revising OCNMS permitting regulations. The reinstatement of these paragraphs will ensure continued coordination with the treaty Indian tribes whose cultural and treaty resources may be affected by activities of regulated entities. In addition,

these provisions provide notice to the regulated community of NOAA's responsibilities to treaty Indian tribes whose cultural and treaty resources may be affected by a permittee's proposed activities.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Helene Scalliet at (301) 713-3125 x281 or Helene.Scalliet@noaa.gov.

SUPPLEMENTARY INFORMATION:

On November 1, 2011, NOAA issued final regulations revising permit criteria for Olympic Coast National Marine Sanctuary (76 FR 67348). NOAA inadvertently excluded existing paragraphs (d) through (h) in section 922.153 from the regulatory text as a result of mistaken directions given to the Government Printing Office, which is responsible for publishing the Code of Federal Regulations (CFR). Instead of amending only paragraphs (a) through (c) of that section, per the 2011 rulemaking, NOAA instructed GPO to revise section 922.153 in its entirety, thus replacing all existing regulatory text with sections (a) through (c). The missing paragraphs of regulatory text are essential to inform regulated entities of NOAA's responsibilities toward

treaty Indian tribes and their cultural and tribal resources. NOAA's responsibility to federally recognized Indian tribes, their cultural and treaty resources may affect both the processing and determinations of applications to conduct activities in the Sanctuary.

The missing paragraphs (d) through (h) can be found in a previous final rule in 60 FR 66875, published on December 27, 1995 and at 15 CFR 922.153 (2011).

Evidence that this deletion of paragraphs (d) through (h) was an inadvertent procedural error can be drawn from NOAA's absence of discussion on these changes in the preambles of both the proposed and final rules, as well as the absence of analysis in the associated environmental assessment prepared according to the National Environmental Policy Act (NEPA). The plain language of the prior rule should have guided the public's knowledge and expectations of regulated entities proposing activities in the Sanctuary. Without the missing paragraphs, those expectations would be conflicted. Accordingly, NOAA is publishing this technical correction as a correcting amendment without notice and comment. This rule reinstates paragraphs (d) through (h) of section 922.153.

Classification

A. Executive Order 12866: Regulatory Impact

This final rule has been determined to be not significant for purposes of the meaning of Executive Order 12866.

B. Administrative Procedure Act/Regulatory Flexibility Act

The Assistant Administrator of the National Ocean Service (NOS) finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive the notice and comment requirements of the Administrative Procedure Act because this rule merely reinstates language from a rule previously submitted to notice and comment review and inadvertently deleted from the Code of Federal Regulations and as such is unnecessary. This rule corrects a procedural error and ensures required and expected implementation of NOAA's statutory responsibilities toward treaty Indian tribes with cultural and treaty resources in or near the Sanctuary; improves communication and collaboration with federally recognized Indian tribes; and fulfills the intent of Executive Order 13175. NOAA has decided to make this document effective upon publication because public comment and delayed effectiveness are unnecessary. The language has already been subject to notice and comment from the public and is merely a restatement of pre-existing regulatory language. For the reasons above, the

Assistant Administrator finds good cause to waive the 30-day delay in effectiveness.

C. Regulatory Flexibility Act

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

W. Russell Callender, Ph.D.,
Acting Assistant Administrator
for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons discussed in the preamble, the National Oceanic and Atmospheric Administration amends 15 CFR part 922 as follows:

PART 922--NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 et seq.

2. Revise § 922.153 to read as follows:

§ 922.153 Permit procedures and criteria

(a) A person may conduct an activity prohibited by paragraphs (a)(2) through (8) of §922.152 if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and §922.48.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Olympic Coast National Marine Sanctuary, 115 East Railroad Avenue, Suite 301, Port Angeles, WA 98362-2925.

(c) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by paragraphs (a)(2) through (8) of §922.152, if the Director finds that the

activity will not substantially injure Sanctuary resources and qualities and will: further research related to Sanctuary resources and qualities; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in managing the Sanctuary; further salvage or recovery operations in connections with an abandoned shipwreck in the Sanctuary title to which is held by the State of Washington; or be issued to an American Indian tribe adjacent to the Sanctuary, and/or its designee as certified by the governing body of the tribe, to promote or enhance tribal self-determination, tribal government functions, the exercise of treaty rights, the economic development of the tribe, subsistence, ceremonial and spiritual activities, or the education or training of tribal members. For the purpose of this part, American Indian tribes adjacent to the sanctuary mean the Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation. In deciding whether to issue a permit, the Director may consider such factors as: the professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may

diminish or enhance Sanctuary resources and qualities; the cumulative effects of the activity; the end value of the activity; and the impacts of the activity on adjacent American Indian tribes. Where the issuance or denial of a permit is requested by the governing body of an American Indian tribe, the Director shall consider and protect the interests of the tribe to the fullest extent practicable in keeping with the purposes of the Sanctuary and his or her fiduciary duties to the tribe. The Director may also deny a permit application pursuant to this section, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms or conditions of a permit or of these regulations. In addition, the Director may consider such other factors as he or she deems appropriate.

(d) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

(e) The Director may, inter alia, make it a condition of any permit issued that any data or information obtained under the permit be made available to the public.

(f) The Director may, inter alia, make it a condition of any permit issued that a NOAA official be allowed to observe any activity conducted under the permit and/or that the permit

holder submit one or more reports on the status, progress or results of any activity authorized by the permit.

(g) The Director shall obtain the express written consent of the governing body of an Indian tribe prior to issuing a permit, if the proposed activity involves or affects resources of cultural or historical significance to the tribe.

(h) Removal, or attempted removal of any Indian cultural resource or artifact may only occur with the express written consent of the governing body of the tribe or tribes to which such resource or artifact pertains, and certification by the Director that such activities occur in a manner that minimizes damage to the biological and archeological resources. Prior to permitting entry onto a significant cultural site designated by a tribal governing body, the Director shall require the express written consent of the governing body of the tribe or tribes to which such cultural site pertains.

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